**Folsom Ready Mix, Inc. *and* Chauffeurs, Teamsters & Helpers Local Union No. 150, International Brotherhood of Teamsters, AFL–CIO.** Case 32–CA–19801

May 9, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH AND ACOSTA

On February 10, 2003, Administrative Law Judge John J. McCarrick issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief, and has decided to affirm the judge's rulings,[1] findings, and conclusions[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Folsom Ready Mix, Inc., Rancho Cordova, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

*Jennifer E. Benesis, Esq.*, for the General Counsel.
*E.A. Hubbert Jr., Esq. (Rediger, McHugh & Hubbert, LLP)*, of Sacramento, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

JOHN J. MCCARRICK, Administrative Law Judge. This case was tried before me in Sacramento, California, on December 17, 2002 upon the General Counsel's complaint[1] which alleges that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). The principal issues presented are:

1. Did Respondent violate Section 8(a)(1) of the Act by creating the impression of surveillance of employees' union activities?
2. Did Respondent violate Section 8(a)(1) of the Act by engaging in surveillance of employees' union activities?
3. Did Respondent violate Section 8(a)(1) of the Act by attempting to hit union organizers with a vehicle to interfere with leafleting and soliciting employees?
4. Did Respondent violate Section 8(a)(1) of the Act by interrogating an employee about his union activities?
5. Did Respondent violate Section 8(a)(1) of the Act by threatening an employee with discharge for engaging in union or protected-concerted activity?
6. Did Respondent violate Section 8(a)(1) and (3) of the Act by terminating Robert Lahn (Lahn) for engaging in union activities.

Respondents filed a timely answer and denied any wrongdoing.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs of the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

Folsom Ready Mix, Inc. (Respondent) is a California corporation with an office and place of business in Rancho Cordova, California that is engaged in the retail sale of cement and aggregate concrete. During the past 12 months, Respondent, in the course and conduct of its business derived gross revenues in excess of $500,000 and has purchased and received goods valued in excess of $50,000 directly from suppliers located outside the State of California.

Respondent admitted and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

[1] Respondent excepts to the judge's granting of the General Counsel's motion to amend the complaint. We find that the judge properly granted the motion. Rule 102.17 allows for the amendment of a complaint before, during, or after a hearing upon such terms as may be deemed just. Whether it is just to grant a motion to amend a complaint depends on whether the new allegations are closely related to the allegations of the complaint, see *Payless Drug Stores*, 313 NLRB 1220, 1221 (1994), and whether the amendments are so late that the Respondent will be prejudiced by them, see *New York Post*, 283 NLRB 430, 431 (1987). We agree with the judge that the new allegations proposed by the General Counsel in his motion to amend arose from the same leafleting incidents that gave rise to certain of the other complaint allegations, and find that the amendments, being made at the beginning of the hearing, were not so late as to prejudice the Respondent.

[2] Respondent excepts to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951.) We have carefully examined the record and find no basis for reversing the findings.

[1] At the hearing, counsel for the General Counsel moved to amend par. 5 of the complaint to allege that Jack Eaton (Eaton), Respondent's training supervisor/truck boss is a supervisor within the meaning of the Act and by adding paragraph 6(d) to allege that Respondent through Eaton on an unknown date in June or July 2002, threatened an employee with discharge if the employee picked up a union flyer from a union representative who was distributing flyers near Respondent's facility. Over counsel for Respondent's objection, I granted counsel for General Counsel's motion to amend the complaint and denied Respondent's motion for a 90-day continuance. Counsel for General Counsel advised Respondent's counsel on December 13, 2002, that she intended to amend the complaint as set forth above. The amendments are sufficiently related to the extant allegations of the complaint and arise from the same set of circumstances such that no prejudice is visited upon Respondent. *Payless Drug Stores*, 313 NLRB 1220, 1221 (1994). Respondent admitted the supervisory status of Eaton.

Respondent admitted and I find that Chauffeurs, Teamsters & Helpers, Local Union No. 150, International Brotherhood of Teamsters, AFL–CIO (Union) is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

### *A. The Facts*

#### 1. The union organizing, interrogation, threats, and surveillance

Respondent has been engaged in the sale and distribution of concrete from its batch plant (facility) located at 11374 Gold Dredge Way in Rancho Cordova, California. Respondent's owner and president is Scott Silva (Silva). Respondent's vice president and operations manager is Randy Barnes (Barnes). Matt Barsamian (Barsamian) is Respondent's lead dispatcher and Jack Eaton is Respondent's training supervisor/truck boss.

Respondent's employees contacted Edward Rogers (Rogers), business agent/organizer for the Union between April and June 2002.[2] On June 26, Rogers and Michael Tobin (Tobin), the Union's organizer, distributed leaflets at Respondent's facility. On July 3, Rogers and Tobin returned to Respondent's facility and distributed more leaflets to Respondent's drivers, including driver Lahn. The leaflets announced a union meeting on July 9 at Mountain Mikes Pizza on Bradshaw Road in Rancho Cordova. While Rogers and Tobin were handing out the leaflets on the sidewalk near the driveway entrance to Respondent's facility, Barnes drove his pickup truck up over the curb forcing both Rogers and Tobin to move out of the way.[3] Barnes asked Rogers and Tobin, "Are you stopping my drivers?" Rogers replied, "No, I'm waving to them and announcing a meeting." Barnes then sped off showering Rogers and Tobin with dirt and rocks from his spinning tires.

Barnes denied attempting to run over Rogers and Tobin on July 3. Rather he contends he simply pulled the truck far to the right to avoid blocking the driveway. Barnes said that the truck tires spun and threw up dirt because he was not familiar with the truck he was driving. Based upon Rogers and Tobin's testimony, General Counsel's Exhibits 5 and 8 and Respondent's Exhibit 5, it is clear that Barnes drove over the curb near where Rogers and Tobin were standing. It is unlikely Barnes' truck tires would have thrown up dirt at Rogers and Tobin unless he had crossed into the dirt area shown on the exhibits by driving over the curb and nearly hitting the union representatives. I find that Rogers and Tobin were credible witnesses while Barnes was disingenuous. Barnes' excuse for peeling out of the dirt area and throwing up dirt on Rogers and Tobin is specious. Barnes further compromised his credibility by lying about engaging in surveillance of the July 9 union meeting. Barnes said he was at the gas station to get a soft drink not to watch the union meeting. However, Barnes later admitted on cross-examination, when confronted with his Board affidavit, that he had gone to the restaurant on July 9 to see the union meeting. I do not credit Barnes' testimony.

On July 3, while at work, Lahn spoke with three other drivers about the union meeting to be held on July 9. On July 5, Lahn signed an authorization card for the Union.

In June or July Eaton approached Respondent's driver, Jim Trousdale as Trousdale was leaving the facility. Eaton said, "[T]hat there was a union official out in front of the plant, and that if I stopped to talk to him or accept any literature from him, I was fired."

Eaton denied telling Trousdale he would be fired if he talked to the union official or accepted any literature from him. Eaton admitted he told Trousdale not to stop and get a flyer from the union representatives. Eaton's concern was allegedly that trucks were blocking the exit from Respondent's facility. Eaton's proffered reason is specious. There is no evidence that Respondent's drivers were blocking the exit by picking up cross traffic at the exit onto Gold Dredge Road. Moreover, there is sufficient space at the sidewalk for two vehicles to pass. I credit Trousdale's testimony.

At work on Saturday, July 6, after returning from a delivery, Lahn spoke with Barsamian. Lahn facetiously thanked Barsamian for sending him out on a particularly nasty job. Barsamian said he did not send Lahn out on the job. Lahn said, "Well if you didn't do it, who did?" Barsamian replied that Barnes had sent him because Barnes and Silva were mad at Lahn for organizing the Union and betraying them. This was part of the payback. Barsamian said Barnes and Silva couldn't understand why Lahn was organizing the Union since he was at the top of the pay scale, was driving a new truck, had seniority and had just about everything the company could offer. Lahn told Barsamian he had nothing to do with organizing the Union. Barsamian said Lahn better get hold of Barnes and have a talk because things were getting pretty damn hot.

Barsamian denied only that he told Lahn Barnes and Silva were mad at him for organizing the Union. I find that Lahn's testimony concerning this conversation was more detailed and plausible than Barsamian's version. I find it more likely that this conversation began with Lahn's complaint about being sent out on the bad job and Barsamian's denial it was his responsibility. Lahn had no reason to raise the union issue initially, as Barsamian testified, until Barsamian advised him Barnes and Silva were mad because of his union activity. I will credit Lahn's testimony.

Lahn called Barnes cell phone number on July 6 at about 1:30 p.m. Lahn told Barnes, "I had nothing to do with the Union. I was not the Union organizer." Barnes said, "If you're not the Union organizer, who is?" Lahn replied he could only speak for himself. Barnes told Lahn the wanted to see him in the office at 7 a.m. on Monday July 8.

It was Barnes' testimony that the substance of this telephone conversation was Lahn's complaint about being sent to a bad job. According to Barnes, only later in the conversation did Lahn mention Barnes' belief that Lahn was the union organizer. Barnes said Lahn asked him whom Barnes thought was involved with the Union. It is unbelievable that just after being told by Barsamian that Barnes and Silva were mad at Lahn for

[2] All dates are in 2002 unless otherwise specified.

[3] At the time of this incident one of Respondent's drivers was coming down Respondent's driveway where he could see the incident. Later that day a senior driver named Bob told another of Respondent's drivers, Jim Trousdale, that Barnes had tried to run over a union representative in front of the facility.

organizing the Union, Lahn would have called Barnes about being sent on a bad job. It is even more unbelievable that Lahn would have continued to ask Barnes who Barnes thought was involved with the Union. This certainly was not in Lahn's interest. I credit Lahn's version of this conversation.

On July 8, Lahn went to Barnes' office at about 7:10 a.m. Lahn told Barnes he had nothing to do with the Union. Barnes replied he didn't know who to trust and who to believe. Barnes then asked Lahn, "What was I willing to do to keep my job." Lahn said he didn't understand the question. Again Barnes said, "What was I willing to do to keep my job." Lahn did not reply. Barnes said that Lahn, "had been seen talking to the union representatives, taking a flyer, showing a flyer to other drivers on the job site." Lahn responded that he knew the union representatives outside work and had socialized with them. Barnes then said that Lahn was an on-going problem and that he had been sticking up for Lahn for 18 months. Lahn said this was the first time he had heard about this. At this time Silva drove into the facility. Barnes said he was going to get Silva and bring him into the meeting so Lahn could explain to Silva that he had nothing to do with the union activity. About a minute and a half latter Barnes returned to the office and told Lahn he was fired.

According to Barnes, Lahn began this conversation with complaints about being dispatched to onerous jobs. Only much later, after Barnes told Lahn he was tired of Lahn's behavior and attitude, did Lahn bring up the subject of the Union. Again Barnes said it was Lahn who repeatedly questioned him about who Barnes thought was involved in the Union. For the reasons set forth above, I find Barnes is an incredible witness. I will credit Lahn's version of this conversation.

On July 9 at 5:30 p.m., a union meeting was held at Mountain Mike's Pizza in Rancho Cordova. Present were Rogers, Tobin, Lahn, Mike Lahn, Eric Rickman, and Tracy Cameron. None of the people were current employees of Respondent. At about 6 p.m. Rogers stepped outside the restaurant and saw a pickup truck across the street in a gas station facing the restaurant. With his camera in hand, Rogers approached the pickup. As Rogers headed toward the vehicle it backed up quickly and drove around the gas station and came out from the rear of the station. When Rogers was about 90 feet from the pickup truck, he recognized Barnes as the driver. Barnes admitted Silva was a passenger in the pickup truck.

Barnes' testimony was further compromised when he lied about his purpose for being present at the gas station. On direct examination Barnes said he was at the gas station to get a soda on his way to Respondent's nearby facility. However, on cross-examination, when confronted with his Board affidavit, Barnes admitted he was at the gas station to see the union meeting.

2. Respondent's termination of Robert Lahn

Respondent contends that it fired Lahn because of his bad attitude and behavior rather than for engaging in any union or protected-concerted activity. Respondent hired Lahn as a concrete truckdriver in May 2000. In February, Respondent promoted Lahn to training supervisor/truck boss and gave him a $2/hour pay raise to $19/hour. In mid-March Respondent removed Lahn from the training supervisor/truck boss job but retained him as a concrete truckdriver at $19/hour. Between July 2000 and early 2002, Respondent gave Lahn gift certificates five times, cash three times, and baseball tickets once as rewards for his performance.

Respondent relies on a number of incidents for terminating Lahn. Barnes testified that he received a complaint from a motorist on August 11, 2000, that Lahn was rude to her. Barnes discussed the matter with Lahn and Lahn denied rudeness to any motorist. No warning was given to Lahn. Barnes also said he received a complaint from an employee of DBC Concrete on August 2, 2000, complaining Lahn was standing around for 10–15 minutes. Barnes discussed the matter with Lahn and Lahn denied the incident. No warning was given to Lahn concerning this incident.

In March or April 2001, Lahn threw a plastic mud flap on the floor of Barsamian's office and cursed about the cause of the accident that caused him to damage the flap on his truck. Respondent did not place any warning in Lahn's file concerning this incident.

On August 11, 2001, Respondent gave Lahn a plan for improvement notification. It is signed by Supervisor Chris Stanley (Stanley) and notes improvement areas in communication and attitude. Stanley had no recollection concerning the events of this notification. There is no evidence that Respondent ever gave Lahn a copy of this notification. Barnes issued a second plan for improvement notification dated September 21/September 22, 2001. It is signed by Barnes and notes a need for improvement in Lahn's attitude. Barnes said the warning was for Lahn's use of hand gestures in the yard. Barnes admitted he never gave Lahn a copy of this notification. On November 9, 2001, Respondent gave Lahn his first warning for having his air tank pressurized while loading under the batch plant. Stanley had no recollection of discussing this matter with Lahn. Further there is no evidence Respondent gave Lahn a copy of the warning. On November 19, 2001, Respondent gave Lahn a second warning for not getting a release signed by a customer. There is no evidence Respondent discussed this matter with Lahn or gave him a copy of the warning. On November 20, 2001, Respondent issued Lahn another warning for failing to release pressure from the tank on his truck. There is no evidence that Respondent discussed this matter with Lahn or gave him a copy of the warning. On February 22, Respondent gave Lahn a warning for hitting another cement truck. Lahn admitted the incident as well as receiving a copy of the warning. On March 15, Respondent gave Lahn a warning for keeping the keys to his truck overnight. Lahn admitted the incident as well as receiving a copy of the warning.

In early 2002 Lahn entered Barsamian's office with a chair and threw it against a desk in an angry manner. Lahn did not receive a written warning for this incident according to Barsamian because they recognized Lahn had a volatile personality and they let it blow over. However, Lahn was removed from his position as training supervisor/truck boss for the chair-throwing incident.

In March 2002, while he was still training supervisor/truck boss, Lahn removed the photo of an employee's child from the

employee bulletin board. Respondent did not warn Lahn for this incident.

Finally on April 12, Respondent issued Lahn a warning for leaving his air tank pressurized overnight. While Lahn denied receiving this warning, he did admit receiving a warning for leaving his air tank to be pressurized overnight in March.

### *B. Analysis and Conclusions*

#### 1. The July 3 attempt by Barnes to hit union organizers with his vehicle and thereby interfere with leafleting and soliciting employees

An employer's threat of physical harm to a union representative, when witnessed by employees, violates the Act. *B & M Linen Corp*., 338 NLRB 5 (2002); *New Life Bakery*, 301 NLRB 421, 428 (1991). In *New Life Bakery*, the plant manager attacked a union representative on the picket line. The Board concluded employees would infer from the assault that the employer would likely retaliate in the same manner against employees who supported the Union.

In this case, Barnes threatened both Rogers and Tobin with physical harm by attempting to hit them with his truck in the presence of at least one of Respondent's drivers. Later, other employees perceived Barnes' conduct as a deliberate attempt to injure the union representatives. Employees would reasonably infer from Barnes' threat of physical harm to the union representatives that Respondent would likely retaliate in the same manner if they engaged in union activity. I conclude that Respondent violated Section 8(a)(1) of the Act by threatening Rogers and Tobin with physical harm.

#### 2. The July 6 interrogation of Robert Lahn

In general, it is unlawful for an employer to inquire as to the union sentiments of its employees. *President Riverboat Casinos of Missouri*, 329 NLRB 77 (1999). Whether an interrogation is unlawful is determined by the totality of the circumstances. *Rossmore House*, 269 NLRB 1176, 1177 (1984); *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985). The standard is whether under all the circumstances the alleged interrogation reasonably tends to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. The Board applies an objective standard when determining whether a statement is coercive. *MDI Commercial Services*, 325 NLRB 53, 63–64 (1997).

During his July 6 telephone conversation with Lahn, Barnes asked Lahn if he wasn't the union organizer, who was. This interrogation came from Respondent's vice president and asked for the identification of a specific person, presumably for purposes of retaliation. Under such circumstances the question from Barnes was coercive and would tend to restrain employees in the exercise of Section 7 rights. The interrogation violated Section 8(a)(1) of the Act.

#### 3. Creating the impression of surveillance on July 6 and 8

An employer may not create the impression that employees' protected activities are under surveillance. *Hudson Neckwear Inc.*, 302 NLRB 93, 95 (1993). Telling an employee that he is the ringleader for the Union when an employee has not openly shown his support for the Union creates the impression that the employee's union activities are under surveillance. *Peter Vitale Co.*, 310 NLRB 865 (1993).

On July 6, Barsamian told Lahn that Respondent believed he was the union organizer. Since Lahn was not an open advocate for the Union, this statement unlawfully created the impression that Lahn's union activities were under surveillance and violated Section 8(a)(1) of the Act.

On July 8, at the meeting in Barnes' office, Barnes told Lahn that Lahn had been seen talking to union representatives, taking a union flyer, and showing a union flyer to other employees on the job. The statement that Barnes knew of every union activity Lahn engaged in, suggested that Lahn's union activities were being closely monitored by Respondent and violated Section 8(a)(1) of the Act. *United Charter Service*, 306 NLRB 150 (1992).

#### 4. The July 9 surveillance of the union meeting

Respondent contends that there was no impression of surveillance created by Respondent at the July 9 union meeting since no employees of Respondent were present. General Counsel contends that an impression of surveillance can be created even in the absence of employees. *United Biscuit Co., of America*, 38 NLRB 778, 782 (1942). For the reasons set forth, infra, I find that Lahn was an employee at the time of the July 9 union meeting. Barnes admitted that he was present at the gas station across the street from the restaurant where the union meeting was being held to see the meeting. Clearly, Barnes and Silva were present to engage in surveillance of the union meeting and their actions violated Section 8(a)(1) of the Act.

#### 5. The June or July threat to terminate Jim Trousdale

An employer's threat of discipline for engaging in union activities violates the Act. *Bestway Trucking, Inc*., 310 NLRB 651, 671 (1993); *Q-1 Motor Express*, 308 NLRB 1267, 1277 (1992). There is no evidence Respondent has valid work rules prohibiting solicitation or distribution. Further there is no evidence that the union representatives' actions at Respondent's facility at any time impeded the ingress or egress of Respondent's trucks or created any kind of hazard. When Eaton told Trousdale if he stopped to talk to the union officials or take a flyer on his way out of the plant, he would be fired, Respondent violated Section 8(a)(1) of the Act.

#### 6. The July 8 termination of Robert Lahn

The General Counsel has the initial burden of establishing that union activity was a motivating factor in Respondent's actions alleged to constitute discrimination in violation of Section 8(a)(3) of the Act. The elements required to support such a prima facie violation of Section 8(a)(3) are union activity, employer knowledge of the activity, and a connection between the employer's antiunion animus and the discriminatory conduct. Once General Counsel has established its prima facie case, the burden shifts to Respondent to show that it would have taken the disciplinary action even in the absence of protected activity. *Wright Line*, 251 NLRB 1083 (1980).

General Counsel has established Lahn engaged in union activity. Lahn was the only driver who took a flyer from the union representatives. After taking the flyer, Lahn discussed the

coming union meeting with fellow drivers at the jobsite. On July 5, Lahn signed a union authorization card. Respondent's knowledge of Lahn's union activity has also been shown. On July 6, Barsamian told Lahn that Barnes and Silva were angry with Lahn for organizing the Union. On July 8 Barnes told Lahn that Lahn had been seen talking to union representatives, taking a union flyer, and showing a union flyer to other employees on the job. The record is replete with Respondent's antiunion animus. Barnes tried to run Rogers and Tobin down while they were distributing flyers. Barsamian told Lahn that Barnes and Silva were angry with him because he organized the Union and that "things were getting pretty damn hot." Eaton threatened Trousdale that he would be fired if he talked to the union representatives or took a flyer. Finally, the timing of Lahn's termination occurred shortly after he had engaged in union activity.

I find General Counsel has established a prima facie case that Respondent fired Lahn in violation of Section (8)(a)(1) and (3) of the Act. The burden shifts to Respondent to show it would have terminated Lahn even in the absence of union activity.

Respondent contends it fired Lahn because of his poor attitude and aggressive behavior. Yet the record reflects that Respondent repeatedly excused Lahn's aggressive behavior and went so far as to give him monetary rewards and promotions until it discovered he had engaged in union activity. Thus, as early as August 2000, Respondent received a complaint from a motorist claiming Lahn had yelled at her. Respondent did not consider the matter sufficiently serious to issue Lahn a warning. In March or April 2001 Lahn threw a mud flap in Barsamian's office because he was angry. In September 2001 Barnes placed a note in Lahn's file about unspecified hand gestures but did not bother to give a copy to Lahn or discuss it with him. In the early part of 2002 Lahn threw a chair in Barsamian's office. Barsamian explained no warning was issued to Lahn because Respondent recognized this was how Lahn was and they knew it would blow over. While Respondent removed Lahn from his supervisory position, it did not fire him but retained him as a driver with his raise because he was a good employee. Finally in March, Lahn removed a photo of an employee's baby from the bulletin board and was not warned. The only warnings Respondent issued Lahn were not behavior related. Respondent cannot now contend that it was the accumulation of behavior related incidents that resulted in Lahn's termination when it overlooked his behavior until he engaged in union activity. *Becker Group, Inc.*, 329 NLRB 103 (1999). It was not until Lahn engaged in union activity that Respondent seized upon his many previously forgiven "offenses" as a pretext to fire him. It is clear that Respondent would not have fired Lahn but for his union activity. I find that Respondent violated Section 8(a)(1) and (3) of the Act by terminating Lahn.

## CONCLUSIONS OF LAW

1. Respondent, Folsom Ready Mix, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Chauffeurs, Teamsters & Helpers, Local Union No. 150, International Brotherhood of Teamsters, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By creating the impression of surveillance of employees' union activities, engaging in surveillance of employees' union activities, by attempting to hit union organizers with a vehicle to interfere with leafleting and soliciting employees, by interrogating an employee about his union activities and by threatening an employee with discharge for engaging in union or protected, concerted activity Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

4. By terminating Robert Lahn for engaging in union or other protected, concerted activities Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

5. The Respondent, having discriminatorily discharged an employee, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

## THE REMEDY

Having found that Respondent engaged in serious unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purposes and policies of the Act. The Respondent having discriminatorily discharged its employee, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

## ORDER

The Respondent, Folsom Ready Mix, Inc., Rancho Cordova, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for supporting Chauffeurs, Teamsters & Helpers, Local Union No. 150, International Brotherhood of Teamsters, AFL–CIO or any other union.

(b) Coercively interrogating any employee about union support or union activities.

(c) Creating the impression of surveillance of employees' union activities.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Engaging in surveillance of employees' union activities.

(e) Attempting to hit union organizers with a vehicle to interfere with leafleting and soliciting employees.

(f) Threatening an employee with discharge for engaging in union or protected, concerted activity.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Robert Lahn full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Robert Lahn whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge, and within 3 days thereafter notify the employee in writing that this has been done and that the discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Rancho Cordova, California, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 3, 2002.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting Chauffeurs, Teamsters & Helpers, Local Union No. 150, International Brotherhood of Teamsters, AFL–CIO or any other union.

WE WILL NOT coercively interrogate any employee about union support or union activities.

WE WILL NOT create the impression of surveillance of employees' union activities.

WE WILL NOT engage in surveillance of employees' union activities.

WE WILL NOT attempt to hit union organizers with a vehicle to interfere with leafleting and soliciting employees.

WE WILL NOT threaten employees with discharge for engaging in union or protected-concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Robert Lahn full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Robert Lahn whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Robert Lahn, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

FOLSOM READY MIX, INC.